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IN THE

Supreme Court of the United States

NO. 663 OCTOBER TERM, 1959

PAUL GINSBURG, Petitioner,

v.

HON. WALLACE S. GOURLEY, Chief Judge, United States District Court for the Western District of Pennsylvania, Respondent.

MOTION TO VACATE ORDER DENYING CERTIORARI AND FOR LEAVE TO AMEND PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Paul Ginsburg, petitioner, respectfully moves this Honorable Court to enter an Order vacating its Order heretofore entered denying his Petition for Writ of Certiorari, and then to grant him leave to file the annexed Amendment to Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit, and thereupon to grant the petition for writ of certiorari as amended; and in support hereof avers:

A. On March 21, 1960, this Honorable Court entered an Order denying the unopposed petition for writ

of certiorari in the above entitled cause; not on the merits, but because petitioner had not exhausted all procedural steps in the lower Courts, which has now been accomplished.

B. On April 6, 1960, the Honorable William J. Brennan, Jr., Associate Justice of this Honorable Court entered on Order extending the time for filing petition for rehearing in the above entitled cause to and including June 14, 1960.

C. The said Order entered by Mr. Justice Brennan was made "upon consideration of the application of petitioner".

D. The application of petitioner included the following:

2. The said petition sought review of a judgment whereby the Court of Appeals for the Third Circuit refused, *inter alia*, to compel the Pennsylvania District Court to assume jurisdiction to cleanse an extrinsic fraud perpetrated upon it, which fraud induced the entry of an Order transferring the cause to the Arizona District. The said cause is now pending in the Court of Appeals for the Ninth Circuit at No. 16,768, on appeal from the Arizona District Court at Phoenix.

3. Since the said denial of certiorari herein, to wit, on March 31, 1960, your petitioner lodged with the Clerk of the Court of Appeals for the Ninth Court for submission to that Court on April 11, 1960, his Motion to Open Up and Vacate the District Court Orders Appealed From and to Retransfer and Remand the Cause to the Pennsylvania District for Trial.

4. The same fraud of record which is involved herein, is likewise included therein. It is averred further that there has not yet been an adjudication on the merits by any court of the issue of fraud.

5. Your petitioner is advised, believes and, therefore, avers that the said denial of certiorari by this Honorable Court was not on the merits, for the reasons set forth in the Conclusion (19) of his petition for writ of certiorari, which is as follows:

> It is apparent from the record facts and the law applicable thereto that your petitioner is entitled to a review of the subject judgment. It is further apparent that even more is involved herein that would forcefully impel this Honorable Court to pierce the judgment sought to be reviewed. Involved is the public policy to protect the integrity of the Courts; and to preserve the integrity of the judicial process. Our highest judicial tribunal will never tolerate even one fraud on the Court, and let it go uncleansed. This Supreme Court will never house a single soiled record and it will issue a pronouncement that fraudulent records cannot remain free of attack with the same full protection to which legal records are entitled.

6. Your petitioner is further advised, believes and, therefore, avers that the said denial of certiorari was based solely upon the procedural proposition that the said motion now pending in the Court of Appeals for the Ninth Circuit was then available to your petitioner, and thus that procedural step must first be exhausted before this Honorable Court will take jurisdiction.

E. On April 11, 1960, the Court of Appeals for the Ninth Circuit entered an Order denying the Motion to Open Up and Vacate the District Court Orders Appealed From and to Retransfer and Remand the Cause to the Pennsylvania District for Trial. A certified copy of said Motion and Order have been lodged herewith in this Honorable Court.

F. The said Motion denied on April 11, 1960, in the Court of Appeals for the Ninth Circuit, included the following averments:

4. Copies of your appellant's Petition for Writ of Certiorari to the United States Court of Appeals for the Th Circuit and Appendix filed in the Supreme Court of the United States at No. 663 October Term, 1959, in the matter of Paul Ginsburg, Petitioner, v. Hon. Wallace S. Gourley, have been lodged with this Honorable Court, and the same is incorporated herein by reference thereto. In said petition, the Statement of the Case (3-10) sets forth the crux of the instant motion. Therein reference is made (7) to Pennsylvania District Judge Marsh's Opinion dated June 11, 1954, pertaining to the Motion for Transfer, showing how deeply influenced the Judge was by the fraudulent misrepresentaiton about the financial condition of the minors and their mother—guardian ad litem; and that the inducing reason for the transfer was the convenience of the "three other witnesses", Mr. Rosenzweig, Mr. Overend and Mrs. Frantz.

5. In the Pennsylvania District Court it was fraudulently misrepresented that said "three other witnesses" at Phoenix could and would testify in support of the Complaint, which alleged an oral trust for the two

minor sons "at the time" when the decedent-insured in writing had voluntarily made your appellant (his brother) the absolute owner, sole beneficiary, premium payor and possessor of the insurance policies.

8. Your appellant knew that those misrepresentations were false when made, and that none of the appellee's "witnesses" could possibly produce any evidence to establish the alleged oral trust; however, he was not permitted by the Court and was unable at any rate to expose their fraud prior to trial. At the trial the extrinsic fraud was positively established; and, being a fraud of record, it is apparent.

10 On May 21, 1959, your appellant's Motion to Retransfer the Cause, based upon the fraud on the Court discovered at the trial, was presented below by his attorney, Hess Seaman, Esquire, of Beer, Seaman & Polley. On June 16, 1959, through said counsel, your appellant's Notice of Taking Depositions (on June 30, 1959) in support of the Motion to Retransfer the Cause was served and filed. On June 18, 1959, District Judge Ling summarily denied the Motion to Retransfer the Cause, in advance of the noticed depositions, without Hearing thereon, refusing to consider the issue of the record fraud. The following day, June 19, 1959, District Judge Ling entered Judgment (unaccompanied by an Opinion) for the interpleaded plaintiffs against your appellant, the interpleaded defendant, simply signing the insupportable and unsupported Findings of Fact and Conclusion of Law submitted for the interpleaded plaintiffs. Subsequent to the said final Judgment, to wit, on June 29, 1959, District Judge Ling entered an Order granting plaintiffs' motion that the depositions noticed for June 30, 1959, not be taken.

11. Just as the fraud which induced the Pennsylvania Court to transfer the cause to Arizona is a matter of record, so is the point that the final Judgment in the Arizona District was entered prematurely, denying due process of law in general and the right to be heard in advance of judgment in particular. This latter point is obvious, if only from the docket entries. That should leave this Honorable Court no legal alternative but to open up and vacate the said final Judgment and remand the cause for further proceedings.

13. The fraudulent transfer of this cause has deprived the appellant-interpleaded defendant of his right to defend in a Court of competent jurisdiction in which he resides. It is *res judicata* that the Arizona District Court was without jurisdiction because the original Phoenix Complaint at No. Civ. 1882 — Phx. which brought about the interpleader was ordered dismissed as to Paul Ginsburg by Judge Ling for lack of jurisdiction. Judge Ling's said Order Sunstaining Motion to Dismiss, "Done In Open Court the 31st day of March, 1958", concluded, "The Court therefore has no jurisdiction over his person".

14. Because transfer of the cause was procured through fraud, it is elementary that the transferor Pennsylvania Court never lost jurisdiction, the transferee Arizona Court never acquired jurisdiction, and this Honorable Court accordingly has no legal alternative but to order retransfer and remand to the Pennsylvania District for trial, all proceedings in the Arizona District being a nullity.

15. In the Supreme Court Petition at No. 663 October Term, 1959, referred to above and incorporated here-

in, there is adequate legal authority to support the propostion (11-12) that a fraud upon the Court was perpetrated; and that (12-14) the extrinsic fraud on the Court rendered the Order of Transfer void and all proceedings pursuant thereto a nullity.

G. *Prior* to this Honorable Court's denial of the unopposed Petition for Writ of Certiorari herein, it was apparent from the Record that the respondent refused to consider the instant issue of fraud because he thought he was without jurisdiction; and the Court of Appeals for the Third Circuit would not review that decision.

H. *Since* said denial of the unopposed petition for certiorari, it has become apparent from the Record that the transferee Arizona District Judge refused to consider the same issue of fraud without assigning any reason, and the Court of Appeals for the Ninth Circuit likewise refused to adjudicate the issue of fraud through its denial of petitioner's above mentioned Motion.

I. *Now* the issue of fraud presented herein to this Honorable Court finally is fully ripe for consideration, because every lower means of adjudication has been exhausted.

J. This Honorable Court has reiterated the pronouncement that in the District Courts a litigant is to receive his first chance to an adjudication, and in the Courts of Appeals he is to receive his second chance; however, it is not intended that in paying the filing fee to the Clerk, the litigant is purchasing a lottery ticket. The litigant is not to be taking chances, but to be receiving them.

K. It is obvious as a matter of record that your petitioner never had a chance. Neither of the District Courts, nor Courts of Appeals, adjudicated the highly important issue of fraud. It necessarily follows that this Honorable Court is not only your petitioner's Court of last resort, but also his Court of only resort.

L. In view of the foregoing, the fraud perpetrated upon all of the Courts involved herein should be cleansed by this Honorable Court.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner
Carlton House,
500 Grant Street,
Pittsburgh 19, Pa.

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NO. 663 OCTOBER TERM, 1959

PAUL GINSBURG, Petitioner,

v.

HON. WALLACE S. GOURLEY, Chief Judge, United States District Court for the Western District of Pennsylvania, Respondent.

AMENDMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Paul Ginsburg, petitioner, hereby makes the following amendment to his Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

The entire Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit and all of its contents shall remain as originally filed; and in addition thereto petitioner hereby adds to the Reasons Relied on For Allowance of the Writ (11-19) therein, in addition to Reasons I., II., III., and IV., the following Reason:

V.

Petitioner Has Exhausted All Procedural Steps Available in the Ninth Circuit As Well As the Third Circuit Without Receiving Any Consideration, Hearing or Adjudication on the Merits, Leaving to This Court the Adjudication of the Issue of Fraud.

It is finally a matter of record in this Honorable Court that none of the lower Courts would recognize, consider or cleanse the fraud perpetrated upon them and upon your petitioner; neither the District Courts of Arizona and Pennsylvania, nor the Courts of Appeals for the Ninth Circuit and the Third Circuit. Therefore, the above entitled cause is not only fully ripe for review by this Honorable Court, but also such review is required by the fair administration of justice in the Federal System. It is presently evident that this is not only the Court of last resort, but also patently your petitioner's Court of only resort.

To deny certiorari in the face of the supplemented and consummated record now before this Honorable Court would be tantamount to holding that fraudulent misrepresentations which induce Court Orders will be sanctioned, instead of frowned upon; and that "judicial" proceedings pursuant thereto are legal, instead of void.

Respectfully submitted,

PAUL GINSBURG,
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